IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6673 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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BHOLESHANKARSINH @ DABLUSINH RAMSAGAR SINH

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6673 of 2001

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

MR S.S.PATEL, AGP for Respondent No. 1-3

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 27/09/2001

ORAL JUDGEMENT

By means of filing this petition under Article

226 of the Constitution of India, the petitioner/detenue who has been detained by the District Magistrate, Surat vide order dated March 24, 2001 (Annexure-A to the petition) in exercise of the powers conferred under sub-Section 2 of Section 3 of the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980 ('the P.B.M. Act' for short hereinafter), has challenged the said order and prayed to issue a writ of habeas corpus or any other writ, order or direction quashing and setting aside the order of detention and set him at liberty forthwith.

2. The averments made in the petition and the grounds of detention manifest that the petitioner is the owner of a Tanker which was being used by the Milan Auto Transport and one Laxmanbhai R Patel is managing the affairs of the Millan Auto Transport. The said tanker was inspected by the inspecting staff on April 15, 2000. During the said inspection it was noticed that 5000 liters of Neptha was found less. Therefore, according to the detaining authority the petitioner is carrying the activities in the manner prejudicial to the maintenance of supply of commodities essential to the community and public at large and therefore, the authority found it necessary to detain the petitioner on the grounds stated in the impugned order.

3. It is contended by Mr.H.R.Prajapati, learned advocate for the petitioner that the petitioner is the owner of the tanker and he is doing business of transporting the petroleum products. The tanker is being used by the Milan Auto Transport on contract basis for transporting petroleum products. He is not concerned with the business carried out by one Laxmanbhai R Patel who is managing the affairs of Milan Auto Transport. Petitioner has no criminal history, record or antecedents in any manner nor he has acted in a manner prejudicial to the supply of the essential commodities. What is stressed by the learned counsel is that if the detaining authority wanted the petitioner to be prevented from blackmarketing activities, then it was open for the authorities to arrest him under the provisions of the Essential Commodities Act 1955 ('the Act' for short) but that is not done in the present case. It is emphatically submitted that no case has been registered against the petitioner for commission of the offences under the provisions of the Act so far. The ground mentioned in the impugned order that the action under Section 12(AA) of the Act could have been taken, but considering the perpetuated illegal activities and the time that may be consumed in taking the action under Section 12(AA) of the

Act, and after the release of the petitioner on bail the possibility that he may continue the said activity, action under Section 12(AA) of the Act was found not sufficient and the only remedy left with the authority was to detain him, suffers from vices of the non-application of mind on the part of the detaining authority in view of the fact that Section 12(AA) of the Act is no more in force after 1987. He, therefore, urged that the order passed by the detaining authority suffers from non-application of mind and deserves to be quashed and set aside. Mr. H.R.Prajapati has also drawn my attention to the fact that the co-detenu, Laxamanbhai R Patel who is managing the affairs of the Millan Auto Transport with whom tanker was placed under contract, has been released by this Court (Coram:H.K.Rathod,J) vide order dated June 21, 2001 issued in Special Civil Application No. 3574 of 2001. Therefore, the present petitioner may also be given the same treatment by allowing this petition.

4. Mr. S.S.Patel, learned AGP appears for respondents nos. 1, 2 & 3 and contested the petition by filing the affidavit in reply sworn by P.G.Vyas, Deputy Secretary to the Government, Food, Civil Supplies & Consumer Affairs Department, Sachivalaya, Gandhinagar. Ms P.J.Davawala, learned counsel appears for respondent no. 4, Union of India, and contested the petition by filing affidavit in reply sworn by S.L.Meena, Under Secretary in the Department of Consumer Affairs, Ministry of Consumer Affairs, Food and Public Distribution, New Delhi. Mr. Patel, further does not dispute the factual aspect of the observations made by the detaining authority with respect to Section 12(AA) of the Act which has been deleted and is no more in force after 1987. He, therefore, urged to pass appropriate order.

5. I have considered the submissions advanced by the learned advocates appearing for the parties. I have also perused the averments made in the petition and the documents annexed therewith and also considered the affidavit in reply filed by the contesting respondents and the impugned orders - Annexure-A and B to the petition and order dated June 21, 2001 passed by this Court in Special Civil Application No. 3574 of 2001.

6. On having perusal of the impugned orders, there is no manner of doubt that the detaining authority has observed that petitioner/detenu is not possessing any licence for selling the petroleum solvent. However, in view of the provisions contained in Section 7 of the Act, step under Section 12(AA) of the said Act can be taken

against the petitioner. It is further observed that in view of the perpetuated illegal activities of the petitioner and resorting to action under Section 12(AA) of the said Act is likely to consume lot of time, action under P.B.M. Act is taken. Besides this petitioner would have continued said illegal activities after getting released on bail by obtaining order from the competent court, step under Section 12(AA) was found insufficient to curb the activities of the petitioner/detenu and, therefore, the only remedy for the detaining authority was to pass the order under Section 3(2) of the P.B.M. Act by detaining the petitioner.

7. So far as the provisions contained in Section 12(AA) of the Act is concerned, Section 12(AA) was inserted by way of amendment in the year 1982 which remained in force up to 1987 and thereafter the said provision of Section 12(AA) is not continued in the Act. Therefore, obviously, at the time of considering or passing the impugned order of detention, the said provision was not in existence. Notwithstanding the same, detaining authority has considered the said provision while passing the order of detention. That itself shows total non-application of mind on the part of the detaining authority and on this sole count order of detention deserves to be quashed and set aside. Besides this, co-detenu Lammanbhai R Patel has been released by this Court vide order dated June 21, 2001, therefore, on this aspect also, petitioner can be released by giving same treatment.

8. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The impugned order of detention dated March 24, 2001 is hereby quashed and set aside. The petitioner/detenu is ordered to be set at liberty forthwith if not required in connection with any other case. Rule is made absolute with no order as to costs. Direct service is permitted.

(A.M.Kapadia, J)

Jayanti*